

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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<b>In the Matter of</b>	)	
	)	
<b>Access Charge Reform</b>	)	<b>CC Docket No. 96-262</b>
	)	
<b>Price Cap Performance Review for Local Exchange Carriers</b>	)	<b>CC Docket No. 94-1</b>
	)	
<b>Transport Rate Structure and Pricing</b>	)	<b>CC Docket No. 91-213</b>
	)	
<b>Usage of the Public Switched Network by Information Service and Internet Access Providers</b>	)	<b>CC Docket No. 96-263</b>
	)	

**REPLY COMMENTS TO NOTICE OF PROPOSED RULEMAKING AND  
COMMENTS TO NOTICE OF INQUIRY  
BY CONSUMERS' UTILITY COUNSEL DIVISION,  
(GEORGIA) GOVERNOR'S OFFICE OF CONSUMER AFFAIRS**

**INTRODUCTION**

The Consumers' Utility Counsel Division of the (Georgia) Governor's Office of Consumer Affairs ("CUC") was created by an Act of the Georgia General Assembly in 1975 in order to represent and act as a special advocate for the interests of Georgia's residential consumer and small business utility ratepayers in proceedings before state and federal administrative bodies and the courts. Official Code of Georgia Annotated ("O.C.G.A.") section 46-10-1, et seq. Many states, including Georgia,<sup>1</sup> have been leaders in enacting and implementing competition, with an understanding of and experience dealing with local conditions.

<sup>1</sup> In 1995, Georgia enacted its own Telecommunications and Competition Development

CUC offers its reply comments concerning the Notice of Proposed Rulemaking ("NPRM"), and offers its comments regarding the Notice of Inquiry ("NOI"), both released December 23, 1996 (collectively referred to as the "Commission's document"). CUC's comments regarding the NOI are found under heading "I" below, and concern the "Notice of Inquiry on Implications of Information Service and Internet Usage," in section X of the Commission's document. CUC's reply comments regarding the NPRM are found under headings "I" and "II" below, and concern sections VIII.B and V.B of the Commission's document. CUC's comments regarding the NOI and CUC's reply comments regarding the NPRM are offered in one document, because of the issues that are common to both the NOI and NPRM. Accordingly, CUC's comments and reply comments are being filed in both Docket No. 96-262 and Docket No. 96-263.

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**I. ALL USERS OF THE PUBLIC SWITCHED NETWORK  
SHOULD CONTRIBUTE TO ACCESS CHARGES**

Given the entry of the regional Bell operating companies ("RBOCs") into long distance service, the opening of the local exchange markets to competing local exchange carriers ("CLECs"), the pricing considerations before the Commission as stated by the Act, and access reform on the state level,<sup>2</sup> as well as section 254 of the Telecommunications Act of 1996 ("Act") and the recommendations of the Federal-State Joint Board in Docket 96-45, it is desirable that the Commission at this time undertake a review of the system of access charges that was created in the wake of divestiture. Given the legislative and regulatory deadlines imposed by the Act for the subjects mentioned above, however, the Commission does not have much time to review and reform access charges. Indeed, the fact that the exchange access marketplace may not be "competitive," since there still are few if any CLECs actually providing local service in many markets (and, moreover, even fewer CLECs providing facilities-based local service), and some analysts believe that prices for local service in those markets may not decrease significantly for years, puts further pressure on the Commission to hasten access reform.

CUC recognizes that competition dictates that the prices for exchange access bear some rational relationship to costs, and that, regardless of one's stance regarding the market behavior of the major interexchange carriers ("IXCs") in setting prices for long distance service "in lock step," most commentators regardless of their self-interest would concede, as a matter of economic theory, that interexchange service has been "overpriced," at least in the respect that access charges have "subsidized" local service. The Commission, however, must remember at

<sup>2</sup> See O.C.G.A. 46-5-166.

every turn that access charges, albeit imperfectly, have benefited consumers to the extent that they have funded universal support<sup>3</sup> and have allowed for basic local telephone service rates to remain, for the most part, reasonable.<sup>4</sup> Since access charges have been comprised of shared or common costs such as the costs of the loop, as well as costs based on switching and transport facilities, there has been a certain logic to the imposition of access charges: i.e., that the costs of facilities used jointly in the provision of multiple services provided by the public switched network should be borne by the users of those facilities.<sup>5</sup> This logic, as some have observed,<sup>6</sup> has been codified in the Telecommunications Act of 1996 ("Act") with the requirement that the Commission and the states adopt cost allocation methods to ensure that prices for universal service "bear no more than a reasonable share of the joint and common costs of facilities used to provide those services"<sup>7</sup> (Emphasis added). Thus CUC agrees with those who observe that there is no logical basis for exempting any significant interstate users of the public switched network from access charges, so long as they are priced at levels that are equitable to all users.<sup>8</sup>

Of course, access charges have not been assessed equitably to all users of the local exchange carriers' ("LEC's") networks. From their inception, interexchange carriers ("IXCs") and end users have borne the brunt of those charges. Enhanced service providers ("ESPs") - a

<sup>3</sup> For example, DEM weighting, high cost support (the existing federal "universal support fund," and long-term support ("LTS")).

<sup>4</sup> Indeed, the Commission in the NPRM, paragraph 242, recognized "the role that access charges have played in funding and maintaining universal service..." Thus, the Commission found it "critical ...implement changes in the access charge system together with complementary changes in the universal service system."

<sup>5</sup> Comments of the Competition Policy Institute ("CPI"), p. 6.

<sup>6</sup> Id.

<sup>7</sup> Section 254(k) of the Act.

<sup>8</sup> CPI, p. 7.

category that includes Internet Service providers ("ISPs") - have not been made to pay interstate access charges. As the Commission points out,<sup>9</sup> this was intended to be a "temporary" exemption. It was conceived as a "transition mechanism" to avoid rate shock in the growing, albeit "nascent," information services segment of the industry.<sup>10</sup> There was, until recently, very little traffic generated by ESPs relative to other traffic on the public switched network.

All that has changed, dramatically, not only in recent years but in recent months. Some observers indicate that there are some 15 million subscribers to Internet services, with the rate of new subscribers rising exponentially.<sup>11</sup> Internet access now can provide telephony and fax services.<sup>12</sup> Recent publicity regarding America On-Line's network difficulties is causing Internet subscribers to leave their phones "off the hook;" in response, some LECs have proposed price increases in ISDN and network facility to deal with the "congestion" caused by ISPs.

ESPs have argued that claims by some RBOC cost studies regarding "network congestion" attributable to long holding times of users of online services are "highly selective and anecdotal and involve only a few central offices."<sup>13</sup> ESPs further argue that much of the "congestion" cited by some RBOCs relates to the lack of sufficient lines purchased by some ESPs - i.e., as the result of poor business judgment by some ESPs - rather than to "congestion"

<sup>9</sup> NPRM, paragraph 288.

<sup>10</sup> Comments of BellSouth Corporation and BellSouth Telecommunications, Inc. ("BellSouth") p. 86.

<sup>11</sup> Comments of CompuServe Incorporated and Prodigy Services Corporation ("CompuServe"), p. 9.

<sup>12</sup> See e.g., "A New Way to Fax," Telephony, Vol. 231, No. 16 (October 14, 1996), p. 52; "Internet Voice Products Come Under Fire," Telephony, Vol. 230, No. 12 (March 18, 1996), p. 14.

<sup>13</sup> CompuServe, p. ii.

on the public switched network.<sup>14</sup> To the extent that ESPs concede that network congestion is not the fault of individual ESPs, such problems are attributable instead to inadequate planning and inefficient engineering on the RBOCs' part.<sup>15</sup>

Whether there is justification in cost studies or not for their position, ESPs maintain that the flat-rated payments they make to the LECs for the business lines they use cover the LECs' costs. ESPs also conclude that the addition of second and subsequent lines by customers to accommodate online services is "fueling substantial revenue growth for the RBOCs."<sup>16</sup> Moreover, ESPs point out that not all enhanced or information services result in long holding times for the public switched network; to the extent that calls of short duration are used by the financial transactions processing industry to transmit data, they contribute to the efficient operation of the network, and should not be discouraged by separate call setup charges proposed by LECs.<sup>17</sup> Hence ESPs warn that the viability of "independent" or small carriers is threatened by the specter of being made to pay access charges.<sup>18</sup>

In response, the Commission has hesitated to treat ESPs like common carriers and subject them to access charges. The Commission agrees with the ESPs that a key purpose in reforming access charges is to provide incentives to promote investment and innovation in a more efficient transmittal of data to and from end-users than through the traditional circuit-switched voice networks.<sup>19</sup> Thus the Commission initiated the NOI, to give it an opportunity to study the current

<sup>14</sup> Id., p. ii.

<sup>15</sup> Id., p. 14

<sup>16</sup> Id., p. iii.

<sup>17</sup> Id.

<sup>18</sup> Id., p. 10.

<sup>19</sup> NOI, paragraphs 313, 311.

usage patterns of LECs and the impact of such usage on the network,<sup>20</sup> as well as an opportunity to consider the complex jurisdictional, metering and billing issues that would be involved if access charges were imposed on the ESPs, including the application of time-sensitive rates to packet-switched networks.<sup>21</sup> Thus the NPRM tentatively concluded that the existing pricing structure, by which ESPs are not required to pay per minute carrier access charges, should remain for the time being,<sup>22</sup> and that the separate NOI will offer the means to comprehensively investigate the numerous technical, operational, and economic issues which, in the Commission's estimation, go beyond the question whether LECs should be allowed to charge ESPs per-minute access charges.<sup>23</sup>

CUC is mindful that Internet usage has different technical characteristics than the voice traffic that, typically, is transmitted through the public switched network. As a relatively nascent means of communication, industry observers are understandably concerned that ISPs be treated equitably, and that there be incentives to direct Internet traffic to packet-switched networks.<sup>24</sup> The ESPs, however, have not addressed certain basic questions that this Commission must now confront: Who will pay for the network updates that the ESPs say are necessary to employ packet switch technology, e.g., to separate and divert data calls away from the originating LEC switch, as proposed by?<sup>25</sup> What are those costs and will they be borne by increases in tariffed

<sup>20</sup> Id., paragraph 315.

<sup>21</sup> Id., paragraph 315.

<sup>22</sup> NPRM, paragraph 283.

<sup>23</sup> NOI, paragraphs 311-318.

<sup>24</sup> Thus BellSouth argues, at p. 86, that until these issues are explored changing the ESP exemption "might only achieve disrupting the marketplace rather than making it operate more efficiently."

<sup>25</sup> CompuServe, p. 14-15.

rates for the services that are directly concerned, or paid for by the ratepayers at large? To the extent that "congestion" of the public network is really the result of a minority of users of enhanced or information services, is there some uniform pricing solution that the ESPs can endorse, or will only the LECs need to make any changes in their pricing to create the proper incentives to redistribute or shift the "load" on the network? Is the telephony now provided through the Internet being "subsidized" by those ratepayers who cannot afford such services? Who will pay for the use of the common switched facilities if access charges are not paid for by users of enhanced services? Is the public switched, wireline network going to be a "stranded" investment, paid for by those who cannot afford enhanced services or wireless telephones?

Moreover, given the traditional use of access charges in financing universal service, why should federal universal service funds support Internet access and inside wiring for schools and libraries, if the ESPs will not contribute to the funding mechanisms recommended by the Federal-State Joint Board ("Joint Board") in Docket No. 96-45? Viewed from another angle, to what extent is the Joint Board's laudatory proposal to fund Internet access jeopardized by the refusal of ESPs to contribute to the new federal universal service funds? Access charge reform is inextricably tied to universal service: the two(2) dockets cannot be viewed in isolation from each other.

The Joint Board recommended in its decision released November 8, 1996 that, consistent with section 254(h) of the Act, all eligible schools and libraries may receive discounts on telecommunications services, Internet access, and internal connections, subject to a \$2.25 billion annual cap.<sup>26</sup> Apparently the Joint Board meant "telecommunications services" to include, at

least as concerns those services that would receive federal universal support, Internet access.<sup>27</sup>

The ESPs presumably did not object to such characterization of their services. As explained by Netscape in its comments in Docket No. 96-45, ISPs and online service providers that also offer Internet access "rely to a large degree on existing telecommunications carriers for the underlying transport facilities that constitute the Internet's backbone, as well as for local loop connections to individual Internet servers and users"<sup>28</sup>(emphasis added). Thus the ESPs concede there is a network transmission component, as well as an information service component to the provision of Internet access. Broadly speaking, however, only "telecommunications carriers," i.e., those providing network transmission, are envisioned as contributing to the new federal universal service funds.<sup>29</sup>

The Joint Board recommended that the new federal universal funding mechanisms pay for the discount for basic transmission conduit, including the communications link to the ISP, via dial-up or leased line, as well as, in certain cases, the subscription fee paid to the ISP.<sup>30</sup>

"Schools and libraries, however, would be permitted to apply the discount to the entire 'basic' charge by an ISP that bundled access to some minimal amount of content, but only under those circumstances in which the ISP basic subscription

<sup>26</sup> Joint Federal-State Board's Recommendations regarding Universal Service ("Joint Board"), released 11/8/96, Docket 96-45, paragraphs 440, 473.

<sup>27</sup> Id., paragraphs 458-465.

<sup>28</sup> Id., paragraph 462.

<sup>29</sup> Id., paragraph 535; See sections 254(d) and 254(h)(1)(B) of the Act. A further question is thereby suggested: to what extent should ESPs, in their eagerness to receive the benefits of the new funding mechanisms, be treated as telecommunications carriers under the Act?

<sup>30</sup> Joint Board, paragraph 463.

charge represented the most cost-effective method for the school or library to secure non-content conduit access to the Internet."<sup>31</sup>

Of course, the ESPs have argued persuasively that they are not common carriers,<sup>32</sup> as a consequence of which the Joint Board recommended that they not have to contribute to universal service.<sup>33</sup>

As a matter of principal, **all** users of the common loop, including wireless providers and ESPs"), should contribute to the recovery of common loop costs.<sup>34</sup> The IXC's certainly should not be the only providers who contribute to the recovery of common costs. CUC agrees with those who have contended that all providers of telecommunications services that use the local loop should contribute to those costs, including "dial-around" IXC's, local competitors, cellular and other wireless carriers, ISPs and other ESPs.<sup>35</sup> CUC proposes that the Commission proceed from this principle and then consider the different characteristics of each user of the loop and of other facilities of the public switched network, with different means of assessing and different requirements of collecting access charges to be used as appropriate.<sup>36</sup>

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Id.

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Id., paragraph 782.

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Id., paragraph 790.

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CPI, p. 5.

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Id., p. 15

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CPI makes some excellent comments regarding the different treatments that may be accorded different providers, in this respect.

## **II. ACCESS CHARGES SHOULD NOT BE GEOGRAPHICALLY DEAVERAGED**

Paragraph 171 of the NPRM states that unbundled rate elements must be geographically deaveraged because

When prices for unbundled network elements are averaged, the ability to substitute unbundled elements for access will not drive down access rates to their efficient level, because such prices will understate the cost of providing services over the elements in high-cost areas and overstate the cost of providing services over the elements in low-cost areas. When element prices have been deaveraged to reflect cost differences, any divergence between element prices and access charges required by regulation creates an artificial incentive to substitute unbundled elements for access.

In paragraph 180 of the NPRM, the Commission notes that it has developed a system of density pricing zones, which may be used by ILECs to deaverage geographically its rates for special access and switched transport services, and proposes deaveraging under certain circumstances all access charge elements except the subscriber line charge ("SLC").<sup>37</sup> The Commission is concerned that, where unbundled network elements are deaveraged, continuing to require access rates to be averaged across regions would foreclose ILECs from competing with CLECs which purchase unbundled elements in low-cost areas, while still requiring ILECs to charge "below-cost" access rates in high-cost areas.<sup>38</sup> Some observers believe, however, that any effort to deaverage prices

<sup>37</sup> The Commission, however, asks for comments concerning whether the SLC should be deaveraged.

will result in "massive administrative exercises" that would complicate the assessment and collection of access charges to an extent that cannot be economically justified.<sup>39</sup>

Others have agreed that geographic deaveraging is inappropriate because it could be used by the LECs to extract a higher contribution in those areas where very little competition exists.<sup>40</sup> Those commentators argue that switched access rates are far more strongly related to the IXCs' end user rates, which cannot be geographically deaveraged, than to the prices of unbundled network rate elements, and that the joint and common costs of facility do not vary greatly as between geographic areas. If access rates were higher, for example, in rural areas than in densely populated zones, IXCs could choose not to serve certain areas. Moreover, section 254(g) of the Act requires IXCs' rates to subscribers in rural and high cost areas to be no higher than the rates for subscribers in urban areas.<sup>41</sup>

While CUC does not maintain that LECs should be "squeezed" by the arbitrage opportunities that may be presented to CLECs purchasing unbundled elements, the problems posed by the Commission in seeking geographic deaveraging of access charges are of the Commission's own creation; i.e., if not for having pressed the alleged need for geographic deaveraging of unbundled network elements in Docket No. 96-98, there would be no need for the Commission to press the purported need here for geographically deaveraged access charges. CUC is dismayed that the Commission seeks yet another

<sup>38</sup> NPRM, paragraph 182.

<sup>39</sup> Texas Office of Public Utility Counsel's Initial Comments ("Texas PUC"), pp. 13-14.

<sup>40</sup> Comments of State Advocates ("State Advocates"), p. 25. Indeed, the State Advocates argue that there is reason to believe that cost differences are not the true basis for the LECs' push to deaverage switched rates.

<sup>41</sup> Id.; also, Texas PUC, p. 14.

opportunity to obtain, through the back door, that which (thus far) has been denied entrance, as a result of the appeal of the interconnection order pending in the Eighth Circuit, through the front door. CUC, which has argued that geographic deaveraging within states as proposed by the Commission in its interconnection order in Docket 96-98 would adversely affect rates for rural and other ratepayers,<sup>42</sup> agrees with opponents of the Commission's proposal here, that geographic deaveraging is inappropriate with respect to access charge reform, and that section 254(g) of the Act prohibits such determination of access charges. CUC is heartened that other consumer advocates recognize the risks involved with geographic deaveraging.<sup>43</sup> The risk of "rate shock" to rural customers and other persons, who live in areas in which competition may not develop fully (even without the Commission's deaveraging proposal with respect to access charge reform), is too great to permit this kind of economic gerrymandering and social experimentation.

### III. SUMMARY

The CUC applauds the expressed intent of the Commission to use the NOI to fully examine the technical, operational, and economic issues implicated by growing Internet use and information service usage. The Commission should proceed from the principle that all users of the public switched network ought to contribute to its costs, and reexamine the exemption that ESPs have enjoyed. The apparent inequity in allowing ISPs to benefit from the new universal

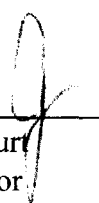
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<sup>42</sup> See Consumers' Utility Counsel Division's Statement, Brief and Argument as Amicus Curiae, filed in Iowa Utilities Board, et al, v. FCC and USA, Case No. 96-3321, U.S. Court of Appeals for the Eighth Circuit.

<sup>43</sup> See State Advocates.


service funds , when at the same time they contribute nothing to universal service, should be particularly examined. Finally, geographic deaveraging should not be imposed on the states, whether in this or in any other docket before the Commission.

Respectfully submitted,



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Director



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### **CERTIFICATE OF SERVICE**

This is to certify that on February 11, 1997, as concerns Docket No. 96-262, an original and sixteen (16) copies of the foregoing were served by express, overnight mail addressed to Office of the Secretary, Federal Communications Commission, Room 222 - 1919 M Street, NW, Washington, DC 20554 and two (2) copies of the foregoing were served by express, overnight mail addressed to Competitive Pricing Division, Common Carrier Bureau, Room 518 - 1919 M Street, NW, Washington, DC 20554; and that, as concerns Docket No. 96-263, an original and sixteen (16) copies of the foregoing were served by express, overnight mail addressed to Office of the Secretary, Federal Communications Commission, Room 222 - 1919 M Street, NW, Washington, DC 20554 and two (2) copies of the foregoing were served by express, overnight mail addressed to Competitive Pricing Division, Common Carrier Bureau, Room 518 - 1919 M Street, NW, Washington, DC 20554.

A handwritten signature in cursive script, reading "Kennard B. Woods". The signature is written in dark ink and is positioned above a horizontal line.

Kennard B. Woods